

**DECISION**



24336 *case*  
*PAC*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-209082, B-209219

**DATE:** March 1, 1983

**MATTER OF:** Emerald Maintenance, Inc.; The Big Picture  
Company

**DIGEST:**

Because an award must be made in accordance with the terms of the solicitation, agency properly evaluated prompt-payment discounts even though Defense Acquisition Regulation was amended to preclude such evaluation.

Emerald Maintenance, Inc. and The Big Picture Company protest the proposed award of contracts under invitations for bids F65503-82-B-0033 (IFB 0033) and F28609-82-B-0045 (IFB 0045), respectively. Both solicitations were issued by the United States Air Force. Emerald and Big Picture contend that the agency improperly considered prompt-payment discounts in its evaluation of bids under the solicitations. We deny the protests.

Emerald Protest

Eielson Air Force Base, Alaska issued IFB 0033 on July 23, 1982, for the maintenance of family housing. The solicitation, which set September 8 as the bid opening date, provided that prompt-payment discounts offered for payment in 20 or more calendar days would be considered in evaluating bids. On August 24, the contracting activity received notice that the regulation pertaining to the consideration of prompt-payment discounts had been changed; agencies were now directed no longer to consider prompt-payment discounts offered by bidders when evaluating bids. See Defense Acquisition Circular (DAC) 76-36, June 30, 1982, amending Defense Acquisition Regulation (DAR) § 2-407.3 (1976 ed.). Public notice of this change

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was published in the Federal Register on August 26. See 47 Fed. Reg. 37476 (1982). The contracting activity did not amend the solicitation to incorporate the change.

Emerald states that the contracting officer advised bidders during bid opening and the following day that prompt-payment discounts would not be considered in the evaluation of bids. The contracting officer, however, evaluated bids in accordance with the terms of the solicitation and considered prompt-payment discounts. Under these circumstances, Northwest Maintenance, Inc., which offered such a discount, was considered the low bidder. Emerald's bid, which did not offer a prompt-payment discount, would have been low if such discounts were not evaluated.

#### Big Picture Protest

McGuire Air Force Base, New Jersey issued IFB 0045 on August 6 for the management and operation of its Audio-Visual Service Center. The IFB set September 7 as the bid opening date and also provided for the consideration of prompt-payment discounts in the evaluation of bids. The contracting officer states that at a pre-bid conference held on August 16, the bidders present, including Big Picture, were told that the solicitation would be unchanged unless an amendment was issued and that prompt-payment discounts could benefit bidders in the award process. Big Picture, however, claims that discounts were not mentioned at the conference.

The contracting activity received DAC 76-36 after the solicitation was issued, but prior to bid opening; it did not issue an amendment to the solicitation to reflect the change. Big Picture asserts that the contracting officer stated at bid opening that in light of DAC 76-36, prompt-payment discounts would not be considered in the evaluation of bids; however, such discounts were in fact considered. American Photographic Industries, Inc. and Big Picture both offered prompt-payment discounts. Big Picture's bid was low without evaluating the prompt-payment discount, but with the evaluation of such discounts, American, which offered a larger discount, was determined to be the low bidder.

Emerald and Big Picture contend that prompt-payment discounts should not have been considered because the amended regulation controlled all solicitations and therefore prompt-payment discounts were not to be considered in evaluating bids, regardless of any contrary provisions in these solicitations. The protesters also note that the contracting activities knew of the change in time to amend the solicitations without causing "undue delay," but they failed to do so.

The contracting activities properly considered prompt-payment discounts in their evaluation of bids. While it may be true that in each instance the agency could have amended the solicitation prior to bid opening, the agencies did not do so and the protesters were aware of this fact. Thus, bids were opened under solicitations which explicitly provided for the evaluation of discounts. Even though the regulation had been changed, evaluation and award was required to be made in accordance with the terms of the solicitations. See Geronimo Service Co., B-209613, February 7, 1983, 83-1 CPD \_\_\_\_\_. Thus, the contracting activities properly considered the offered prompt-payment discounts in evaluating bids.

The protests are denied.

*Sheldon J. Fowler*  
for Comptroller General  
of the United States